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10/626,114	07/24/2003	Steven E. Riedl	61575.1034	9519

EXAMINER	
STOKELY-COLLINS, JASMINE N	

ART UNIT	PAPER NUMBER
2609	

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Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/626,114

Applicant(s)

RIEDL ET AL.

Examiner

Jasmine Stokely-Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-5, 24, and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Petersen et al (US 5,802,051).

Regarding claim 1, Petersen teaches a system for communicating data to a location through a communications network (abstract), comprising:
a mechanism for identifying first data (pointer, column 8 lines 8-16), which is accorded a higher priority than second data to be processed in the location, a data object (ATM cell, column 8 lines 36-40, figure 9 element 940) for transporting the first data being generated in response to an identification of the first data (column 8 lines 23-33, lines 36-40), the data object having a predetermined data transport capacity (column 1 lines 19-20);
a device for determining whether the predetermined data transport capacity exceeds the size of the first data by at least a threshold, at least some of the second data being inserted into the data object when it is determined that the predetermined transport capacity exceeds the size of the first data by at least the

threshold (column 8 lines 36-40); and
an interface for providing the data object to the location (column 8 lines 42-45).

Regarding claim 4, Petersen further teaches the data object includes a data cell in an asynchronous transfer mode (ATM) format (figure 9 element 940).

Regarding claim 5, when read in light of claim 1, Petersen further the data object includes a packet (abstract).

Regarding claim 24, see analysis of claim 1.

Regarding claim 27, when read in light of claim 24, see analysis of claim
4.

Regarding claim 28, when read in light of claim 24, see analysis of claim
5.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-3, 9-12, 14-22, 25-26, 32-35, and 37-42 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al (US 5,802,051) in view of White et al (US 6,392,664).

Regarding claim 2, Petersen teaches the system of claim 1.

Petersen does not teach that the communications network includes a cable network.

White teaches a cable television network (figure 1 element 16, column 3 lines 28-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to embody the system taught by Petersen in White's cable network for the benefit of adhering to transmission priority while saving bandwidth (column 3 lines 48-52).

Regarding claim 3, when read in light of claim 2, White further teaches the location includes a headend (column 4 lines 59-63).

Regarding claim 9, Petersen teaches the system of claim 1.

Petersen does not teach a processor for presenting an entertainment program, wherein the first data includes data representing a command for manipulation of a presentation of the entertainment program.

White teaches a processor for presenting an entertainment program (column 2 lines 53-59, column 3 lines 51-54), wherein the first data includes data representing a command for manipulation of a presentation of the entertainment program (column 4 lines 44-46, column 4 lines 59-63). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the Petersen's system of data transmission to a White's video-on-demand system for the benefit of having an efficient way to transport data between a headend and receiver.

Regarding claim 10, when read in light of claim 9 and further in light of claim 1, see analysis of claim 9.

Regarding claim 11, when read in light of claim 9 and further in light of claim 1, read analysis of claim 9.

Regarding claim 12, when read in light of claim 1, White teaches a processor responsive to a user request for selectively presenting entertainment programming content (see analysis of claim 9), wherein the second data concerns selections of entertainment programming content presentations (column 7 lines 24-26 and column 9 lines 6-7, where in column 7 lines 27-30 White discloses that user preferences can be stored in the head-end).

Regarding claim 14, see analysis of claim 9.

Regarding claim 15, when read in light of claim 14, limitation "set-top terminal" is met by White's WebTV terminal (column 2 lines 53-54), which is a functional equivalent to the claimed set-top terminal.

Regarding claim 16, White further teaches the remote location includes a headend in a broadband communications system (column 2 lines 17-21).

Regarding claim 17, see analysis of claim 16.

Regarding claim 18, when read in light of claim 14, see analysis of claim 4.

Regarding claim 19, when read in light of claim 14, see analysis of claim 5.

Regarding claim 20, when read in light of claim 14, see analysis of claim 9.

Regarding claim 21, when read in light of claim 14, see analysis of claim 9.

Regarding claim 22, when read in light of claim 14, see analysis of claim
12.

Regarding claim 25, when read in light of claim 24, see analysis of claim
2.

Regarding claim 26, when read in light of claim 25, see analysis of claim
3.

Regarding claim 32, when read in light of claim 24, see analysis of claim
9.

Regarding claim 33, when read in light of claim 32, see analysis of claim
9.

Regarding claim 34, when read in light of claim 32, see analysis of claim
9.

Regarding claim 35, when read in light of claim 24, see analysis of claim
12.

Regarding claim 37, see analysis of claim 9.

Regarding claim 38, when read in light of claim 37, see analysis of claim
4.

Regarding claim 39, when read in light of claim 37, see analysis of claim
5.

Regarding claim 40, when read in light of claim 37, see analysis of claim
9.

Regarding claim 41, when read in light of claim 37, see analysis of claim
9.

Regarding claim 42, when read in light of claim 37, see analysis of claim
12.

3. Claims 6 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al (US 5,802,051) in view of Petersen et al (US 5,809,023).

Regarding claim 6, Petersen (5,802,051) teaches the system of claim 1.
Petersen (5,802,051) does not specify the threshold has a zero value.

Limitation "wherein the threshold has a zero value" is met by Petersen (5,809,023) column 5 lines 15-18 where Petersen adds data to the data object "until the payload of the current ATM cell is full", where one of ordinary skill in the art would understand full to mean there is no room left in the ATM cell (zero threshold). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine incorporate Petersen's teaching of filling the entire ATM cell with data for the benefit of having a more efficient use of bandwidth.

Regarding claim 29, when read in light of claim 24, see analysis of claim 6.

4. Claims 7-8 and 30-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al (US 5,802,051) in view of Saito et al (US 5,909,428).

Regarding claim 7, Petersen teaches the system of claim 1.

Petersen does not teach the threshold corresponds to the size of an overhead associated with the inserted second data.

Saito matching cell length with the length of the data to be inserted (column 1 lines 36-38) reads on limitation "the threshold corresponds to the size of an overhead associated with the inserted second data". It would have been obvious to one of ordinary skill at the time the invention was made to combine

Saito's teaching of matching the data length with the cell length for the benefit of efficiently using the entire capacity of an ATM cell.

Regarding claim 8, read in light of claim 7 and further in light of claim 1, Petersen further teaches the overhead includes an indicator indicative of a placement of the inserted second data among the rest of the second data (column 2 lines 38-44).

Regarding claim 30, when read in light of claim 24, see analysis of claim 7.

Regarding claim 31, when read in light of claim 30, see analysis of claim 8.

5. Claims 13 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al (US 5,802,051) in view of Williams (US 5,867,764).

Regarding claim 13, when read in light of claim 1, Petersen teaches the system of claim 1.

Petersen does not teach the second data concerns diagnostics of at least part of the system.

Williams teaches the second data concerns diagnostics of at least part of the system (column 10 lines 43-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the diagnostic data taught by Williams in the data transmission system of Petersen for the benefit of allowing the headend to anticipate or identify problems in customer equipment.

Regarding claim 36, when read in light of claim 24, see analysis of claim 13.

6. Claims 23 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al (US 5,802,051) in view of White et al (US 6,392,664), and further in view of Williams (US 5,867,764).

Regarding claim 23, analyzed with respect to claim 14, Petersen in view of White does not teach the second data concerns diagnostics of at least part of the apparatus.

Williams teaches the second data concerns diagnostics of at least part of the apparatus (column 10 lines 43-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the diagnostic data taught by Williams in the data transmission system of Petersen

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for the benefit of allowing the headend to anticipate or identify problems in customer equipment.

Regarding claim 43, when read in light of claim 37, see analysis of claim 13.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Westberg (US 6,041,054 A) teaches inserting IP/PPP data packets associated with multiple sessions into the payload of an ATM cell.

Laubach (US 6,081,533 A) teaches prioritizing the data in ATM cells.

Breslow (US 6,493,342 A) teaches filling the unused portion of a primary data packet payload with a secondary packet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jasmine Stokely-Collins whose telephone number is 571-270-3459. The examiner can normally be reached on M-Th 8:00-6:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hai Tran can be reached on 571-272-7305. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jasmine Stokely-Collins


HAI TRAN
PRIMARY EXAMINER